P.R. No. 1215/06
Presented by Shri Sumit Tripathi
dated 27.4.06

CF 1007

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Second Appeal No. 187 Of 2006 **Single Bench**

APPELLANT:
PLAINTIFF

Sarojani D/o Karan Sai aged about 47 years, by caste Kanwar, occupation agriculturist and house wife ,resident of Village Makanpur, Thana and Tahsil Pratappur , District Surguja (CG).

VERSUS

RESPONDENTS :
DEFENDANTS

1. Janmati D/o Sarkil W/o Chotai aged about 42 years.
2. Jhola Lal S/o Raghubir aged about 21 years.
3. Chamenee Wd/o Late Raghubir, aged about 43 years.
4. Duejee Wd/o Late Ghura ,aged about 64 years.

All resident of Village Makanpur, Police Station and Tahsil Pratappur, District Surguja (CG).

5. State of Chhattisgarh, through the Collector Surguja (CG).

CERTIFIED COPY
27/04/06
CLERK TO A. G. BILASPUR

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

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HIGH COURT OF CHHATTISGARH, BILASPUR

S.A No. 187 of 2006

Sarojani

Vs.

Janmati & others

Shri Sunil Tripathi, counsel for the appellant.

ORDER
(28.6.2006)

SUNIL KUMAR SINHA, J,

(1) This is the plaintiff's second appeal filed under Section 100 of C.P.C. The plaintiff lost in both the Courts.

(2) This appeal has been directed against the impugned judgment and decree dated 30.1.2006 passed in Civil Appeal No. 4-A/2005 by IInd Additional District Judge (FTC), Surajpur, District-Surguja (CG), arising out of Judgment and decree dated 30.4.2003 passed in Civil Suit No. 42-A/99 by Civil Judge, Class-II, Surajpur, District-Surguja (CG).

(3) The brief facts are that the plaintiff filed a suit for declaration of her title and also for permanent injunction praying for restraining the defendants from interfering with her possession over the suit land. The suit was filed on two grounds. The first ground was that the suit land bearing Khasra no.187 area 0.12 acres situated in PC-13, Tehsil-Pratappur was purchased by the father of plaintiff on 17.2.1968 for a consideration of Rs.100/- and an un-registered sale-deed was executed in his favour. She

succeeded this property from her father. She pleaded that she is in continuous possession of the suit property since the date of sale. Secondly, she also pleaded that since her possession is un-obstructed and adverse to the ownership of the previous owner by way of sale-deed, she has perfected her title by way of adverse possession.

(4) For proving these facts, the plaintiff examined herself only and she could not prove the sale-deed, which remained as un-exhibited and unproved. So far as adverse possession is concerned, there is only oral evidence of the plaintiff that she is in continuous possession of the property since the said date. No other evidence is adduced by her. The trial Court held that the plaintiff could not prove the ownership on these grounds and ultimately, the suit was dismissed.

(5) Against the aforesaid judgment and decree, the plaintiff filed an appeal before the Lower Appellate Court. The Lower Appellate Court also took a similar view and confirmed the judgment and decree passed by the trial Court dismissing the appeal filed by the plaintiff. It is against this judgment and decree, passed by the Lower Appellate Court, the plaintiff has filed this second appeal.

(6) I have heard the learned counsel for the appellant at length and have gone through the records of 2 Courts below and have also perused the evidence adduced by the plaintiff. I have no hesitation to say that the plaintiff could not prove the sale-deed as none of the witnesses of sale were examined by her and ultimately the deed remained unproved and un-exhibited. So far as the question of possession is concerned, the plaintiff, apart from her own evidence, failed to produce any other evidence, particularly the documentary evidence that her possession was open, un-obstructed and was adverse to the ownership and possession of the actual owner of the property. Rather vide

issue No. 2, the trial Court held that the plaintiff was not in possession of the suit property.

(7) In the facts and circumstances, I do not find any reason to interfere in the concurrent findings recorded by the 2 Courts below on these two points.

(8) The appeal does not involve any substantial question of law. It has no merits and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

vatti